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13 PRODUCTIONS CO. LTD.

14 UNITED STATES DISTRICT COURT

15 CENTRAL DISTRICT OF CALIFORNIA

16 WESTERN DIVISION

17 UM CORPORATION, a Japanese
18 corporation,

19 Plaintiff,

20 vs.

21 TSUBURAYA PRODUCTIONS CO.
22 LTD., a Japanese corporation,

23 Defendant.

CASE NO. 2:15-cv-03764-AB-AJW

**DEFENDANT AND
COUNTERCLAIMANT
TSUBURAYA PRODUCTIONS CO.
LTD.'S OBJECTIONS TO UMC'S
REQUEST FOR JUDICIAL
NOTICE**

Date: September 12, 2016

Time: 10:00 a.m.

Location: Courtroom 4

1 TSUBURAYA PRODUCTIONS CO.
2 LTD., a Japanese corporation,

3
4 Counterclaimant,

5 vs.

6 UM CORPORATION, a Japanese
7 corporation; ULTRAMAN USA, INC.,
8 a California corporation; SOMPOTE
9 SAENGDUENCHAI, a Thai individual;
10 GOLDEN MEDIA GROUP, INC., a
11 California corporation; TIGA
12 ENTERTAINMENT COMPANY,
13 LTD., a Hong Kong corporation; and
14 DOES 1-10,

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28 Counterdefendants.

Trial Date: August 22, 2017
Judge: Hon. André Birotte, Jr.

Introduction

Defendant and counterclaimant Tsuburaya Productions Co. Ltd. (“Tsuburaya”) respectfully objects to UMC’s Request for Judicial Notice (“RJN,” Dkt. 77) filed in support of UMC’s Motion for Judgment on the Pleadings, or, In the Alternative, for Summary Judgment (“Motion”).

As discussed below, UMC’s RJN is improper to the extent it seeks to establish through judicial notice facts regarding the interpretation or meaning of the various foreign-court decisions that it identifies. Because judicial notice is inappropriate to interpret disputed foreign law, UMC’s attempt to do so should be denied. Moreover, UMC has failed to submit evidence that any of the decisions for which it seeks judicial notice are in fact authentic. Accordingly, the Court should reject UMC’s Request for Judicial Notice.

Background

In support of its Motion, UMC asks the Court to take judicial notice of the following judicial decisions: (i) September 30, 2010 decision of Tokyo District Court (UMC RJN Exs. A, B); (ii) July 27, 2011 decision of Japan Intellectual Property High court (*id.* Exs. C, D); (iii) April 26, 2012 order of Japan Supreme Court (*id.* Exs. E, F); and (iv) September 29, 2013 decision of Chinese Supreme People’s Court (*id.* Exs. G, H) (collectively, the “foreign decisions”). UMC purports to seek judicial notice of the foreign decisions “for the purpose of determining the preclusive effect to be afforded to the Judgments of the Chinese and Japanese courts.” (RJN at 1-2, 4.)

In addition to seeking judicial notice of the foreign decisions, UMC submitted in support of its Motion a Statement of Uncontroverted Facts and Conclusions of Law (Dkt. 76-2). UMC includes dozens of purported “uncontroverted facts” and “conclusions of law” that are supported only by the foreign decisions themselves, without any other supporting evidence. In its Motion, UMC argues that it is entitled to

1 either judgment on the pleadings under Fed. R. Civ. P. 12(c) or summary judgment
2 under Rule 56 based on the undisputed facts and conclusions of law it identifies.¹

3 ARGUMENT

4 **I. UMC HAS NOT MET ITS BURDEN TO SHOW THAT JUDICIAL 5 NOTICE OF FOREIGN LAW IS APPROPRIATE**

6 Fed. R. Evid. 201 permits a court to “take judicial notice of a fact not subject to
7 reasonable dispute in that it is capable of accurate and ready determination by resort to
8 sources whose accuracy cannot reasonably be questioned.” *Daniels-Hall v. Nat’l Educ.*
9 *Ass’n*, 629 F.3d 992, 999 (9th Cir. 2010). “The party requesting judicial notice bears
10 the burden of persuading the court that the particular fact is not reasonably subject to
11 dispute” and “that the fact is a proper matter for judicial notice.” *Newman v. San*
12 *Joaquin Delta Community College Dist.*, 272 F.R.D. 505, 515-16 (E.D. Cal. Feb. 15,
13 2011).

14 In general, courts may “take judicial notice of court filings or pleadings,” *Pacific*
15 *Bell Tel. Co. v. City of Hawthorne*, 188 F. Supp. 2d 1169, 1171 (C.D. Cal. 2001),
16 though “not for the truth of the facts recited therein, but for the existence of the opinion,
17 which is not subject to reasonable dispute over its authenticity.” *Lee v. City of Los*
18 *Angeles*, 250 F.3d 668, 690 (9th Cir. 2001) (quotation marks omitted). Accordingly, “a
19 court in one case may not take judicial notice of the truth of judicial findings of fact in
20 another case.” *Amponsah v. Lynch*, 627 Fed. Appx. 592, 595 (9th Cir. 2015).

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22
23 ¹ UMC asserts that if the Court considers its Motion regarding preclusion as one for
24 “judgment on the pleadings” under Rule 12(c), rather than for “summary judgment”
25 under Rule 56, then the Court need not consider any of its purported “uncontroverted
26 facts” regarding the foreign decisions. (Dkt. 76-2 at 1 n.1.) Thus, UMC appears to take
27 the position that all the “uncontroverted facts” that it would otherwise need to establish
28 for purposes of Rule 56 through a statement of uncontroverted facts may likewise be
established through judicial notice for purposes of Rule 12(c). As discussed herein and
in Tsuburaya’s opposition to the Motion, because it is improper to take judicial notice
of such disputed issues of foreign law and UMC has submitted no other evidence from
which it could establish that there are no genuine disputes regarding the meaning and
significance of the foreign decisions on which it relies, UMC is not entitled to relief
under Rule 12(c) or Rule 56.

1 The rules regarding taking judicial notice of foreign law are different, however.
2 “In general, foreign law is treated as a fact that must be proven by the parties.” *Abdille*
3 *v. Ashcroft*, 242 F.3d 477, 489 n.10 (3d Cir. 2001). “Although federal courts have
4 discretionary authority to judicially notice the laws of foreign countries,” the question
5 whether to do so is not controlled by Fed. R. Evid. 201, but rather by “the fact-finding
6 procedure contained in Fed. R. Civ. Pro. 44.1.” *Id.*; *see* Fed. R. Evid. 201, Advisory
7 Committee Note (a) (“Judicial notice of matters of foreign law is treated in Rule 44.1 of
8 the Federal Rules of Civil Procedure . . .”).

9 Rule 44.1 sets forth a fact-finding procedure by which “the Court [may] consider
10 any relevant material or source in determining foreign law, regardless of whether that
11 material is otherwise admissible under the Federal Rules of Evidence.” *De Fontbrune*
12 *v. Wofsy*, 2014 WL 1266999, at *2 (N.D. Cal. Mar. 27, 2014). Notably, Rule 44.1
13 “refrains from imposing an obligation on the court to take ‘judicial notice’ of foreign
14 law because this would put an extreme burden on the court in many cases; and [the
15 rule] avoids use of the concept of ‘judicial notice’ in any form because of the uncertain
16 meaning of that concept as applied to foreign law.” Fed. R. Civ. P. 44.1, Advisory
17 Committee Notes.

18 Thus, to avoid reaching uninformed conclusions, courts should not take judicial
19 notice of issues of foreign law unless adequate supporting evidence, such as expert
20 declarations, are properly placed before the court (and only then to the extent the issues
21 are “not subject to reasonable dispute” based on the information provided). *See, e.g.*,
22 *Abdille*, 242 F.3d at 489 n.10 (“refrain[ing] from judicially noticing the content of
23 South African refugee law” where district court had not observed procedures of Rule
24 44.1); *Abdallah v. Int’l Lease Fin. Corp.*, 2015 WL 1263141, at *13 (C.D. Cal. Mar. 9,
25 2015). (“When a party asserting that foreign law applies fails to submit evidence
26 regarding the content of foreign law, the district court is not required to conduct its own
27 research.”). Moreover, because of the complexities of foreign law that do not lend
28 themselves to resolution through judicial notice, courts should take judicial notice of, at

1 most, the “existence” of foreign rulings, but not of “what those rulings do or do not
2 establish.” *In re Bridgestone/Firestone, Inc.*, 420 F.3d 702, 706 (7th Cir. 2005).

3 Here, as evidenced by the many purported “uncontroverted” facts and
4 “conclusions of law” that UMC seeks to establish based only on the foreign decisions
5 themselves, without any supporting evidence, UMC is seeking judicial notice not only
6 of the “existence” of the foreign decisions, but also of a number of “facts” regarding the
7 meaning and significance of them, including regarding what the courts “held,” or even
8 what prior courts “held” in earlier decisions that are discussed in the foreign decisions.
9 *See* UMC Statement of Uncontroverted Fact (“SUF”) Nos. 3, 4, 11, 12, 13, 14, 18, 19,
10 21 and 22. UMC also seeks to establish issues of Japanese and Chinese law regarding
11 preclusion. SUF Nos. 11, 13, 14 and 22.

12 Likewise, in its statement of purportedly uncontroverted conclusions of law,
13 UMC seeks to establish a number of conclusions regarding foreign law based only on
14 the foreign decisions themselves, including, for example, that “the Chinese courts could
15 have considered the preclusive effect of the Japanese or Thai Judgments, had the parties
16 followed the law allowing them to apply to the intermediate court for recognition of
17 foreign judgments.” *See* UMC Conclusion of Law (“COL”) No. 40; COL No. 43
18 (“[T]he Japanese courts did consider and reject the operation of foreign judgments as
19 *res judicata*.”).

20 As set forth in Tsuburaya’s Statement of Genuine Issues Of Dispute In
21 Opposition To The Motion, filed herewith, Tsuburaya disputes many of the purported
22 “uncontroverted” facts and conclusions of law that UMC seeks to establish in reliance
23 on the foreign decisions. Indeed, unlike UMC, Tsuburaya has submitted evidence
24 regarding the foreign law issues in dispute, including the declarations of attorneys from
25 Japan, Thailand and China. *See* Declarations of Manu Rakwattanakul, Peiguo Shen and
26 Tomohiro Tohyama. Tsuburaya also has requested that, to the extent it has not already
27 raised sufficient factual disputes regarding the issues of foreign law raised by UMC, it
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1 be permitted more time to take discovery, including expert discovery, before issues
2 regarding preclusion are decided. *See* Declaration of Daniel Posner ¶¶ 14-23.

3 In the face of such conflicting interpretations of the foreign decisions, and in
4 light of UMC's failure to submit any independent evidence regarding their scope and
5 effect, the Court should deny UMC's attempt to resolve complicated issues of foreign
6 law through judicial notice of an incomplete record regarding those decisions. *See*
7 *LaSala v. UBS, AG*, 510 F. Supp. 2d 213, 233–34 (S.D.N.Y. 2007) ("It is inadvisable
8 for this Court to decide a case where legal experts disagree about critical points in the
9 application of the foreign law."); *Newman*, 272 F.R.D. at 516 ("The court cannot take
10 judicial notice of alleged (and potentially disputed) facts . . .").

11 Thus, to the extent UMC's RJN seeks to recognize anything more than the
12 "existence" of the foreign decisions, its RJN should be denied.

13 **II. INDEPENDENTLY, UMC'S RJN SHOULD BE DENIED BECAUSE THE**
14 **FOREIGN DECISIONS ARE NOT ADEQUATELY AUTHENTICATED**

15 Even if it were otherwise appropriate for the Court to take judicial notice of the
16 foreign decisions, UMC has failed to submit any evidence to demonstrate that the
17 orders are in fact authentic. UMC argues that Exhibits A-D and G-H are "self-
18 authenticating" because they purportedly are published in case reporters or appear on
19 government websites. (RJN at 2-3.) Yet UMC submits no evidence, either through
20 declaration or otherwise, that these exhibits are in fact "true and correct" copies of the
21 foreign orders that it claims appear in judicial publications. Moreover, UMC concedes
22 that Exhibits E-F are not self-authenticating, yet makes no attempt to establish the
23 authenticity of these exhibits. (RJN at 3.) Accordingly, judicial notice is inappropriate
24 for any of the exhibits in UMC's Requests. *See, e.g., Calif. ex rel. Lockyer v. Mirant*
25 *Corp.*, 266 F. Supp. 2d 1046, 1053 (N.D. Cal. 2003) ("As [defendant] has failed to
26 authenticate this document properly, the court declines to take judicial notice of Exhibit
27 4.").

CONCLUSION

For the foregoing reasons, Tsuburaya respectfully requests that the Court deny UMC's Request for Judicial Notice.

DATED: August 15, 2016

Respectfully submitted,

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